IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

(1) S.B.Civil Misc. Appeal No.53/1993
The Executive Engineer, Udaipur & anr. vs. The Chowdhary Construction Company,Jaiur

(2) S.B.Civil First Appeal No.58/1993
The Executive Engineer, Udaipur & anr. vs. The Chowdhary Construction Company,Jaiur

against the judgment and decree dated 24.8.1992 passed by the learned District Judge, Udaipur in Arbitration Cases No.77/1992 & 241/91.

Date of Judgment: July 21, 2006.

PRESENT
HON'BLE MR. PRAKASH TATIA,J.

Mr. S.K. Vyas, Govt. Advocate for the appellant.
Ms. Rekha Borana for the respondent.

BY THE COURT:

These two appeals are against the common order dated 24.8.1992 passed by the learned District Judge, Udaipur on applications, one filed by the respondent-contractor under Section 14(2) read with Section 17 and 41 of the Arbitration Act,1940 and another filed under Section 30 and 33 of the Arbitration Act by the appellant-State. The respondent-contractor prayed that the award passed by the learned Arbitrator dated 29.6.1991 may be made rule of the court, whereas the State-appellant submitted objection under Section 30 and 33 of the Arbitration Act for setting aside of the award.

Brief facts of the case are that the appellant-State gave work contract to the respondent-contractor. According to the respondent-contractor, he received payment of final bill on 21.2.1985 under protest and, thereafter, raised dispute, upon which the department appointed the Arbitrator on 6.5.1989. The Arbitrator was the then Addl. Chief Engineer of the department itself. The learned Arbitrator, by brief award, held the contractor entitled to the amount as mentioned hereinbelow:-

A.No.	Particulars of claims	Amount allowed Rs. Ps.
1.	Deductions allegedly wrongly made from the already paid quantities of earth-work in cutting etc.	18519.27
2.	Payment for the item of spreading of gravel to proper camber in layers not exceeding 15 cms. in thickness as per specifications including dressing	201354.38
3.	Wrongful deduction made on a quantity of 27130.63 cum of “Add extra for 1 km. Lead with all lealds”	30264.91
4.	Difference in cost of earthwork in cutting transported to a lead of 1 km.	42633.84

The total claim of the contractor was Rs.3,96,204.92, against which the learned Arbitrator awarded Rs.2,92,772.40. In addition to above, the claimant claimed interest pendente-lite @ 18%. The learned Arbitrator rejected the claim of the contractor for pendente-lite

interest from 12.5.1989 to the date of the award, however, for interest from the date of award till the date of actual payment to the contractor, the learned Arbitrator left it for the decision of the civil court. The learned Arbitrator decided not to give reasons in the award. The learned Arbitrator also rejected the objection of limitation raised by the State, that too without giving specific reasons.

The trial court rejected the objection against award raised by the State after holding that in fact the State failed in making out any case under Section 30 of the Act of 1948 for setting aside of the award.

The appellant-State in these appeals, stated that the learned Arbitrator did not consider the fact that whatever measurements recorded and rectified are well within the power of the State-department's officers and could have been objected within 30 days of final measurements and that has not been objected by the contractor, therefore, the contractor had no right to dispute the measurements. Therefore, the award given by the learned Arbitrator is contrary to law and rules. It is also submitted by the learned counsel for the appellant-State that the learned Arbitrator wrongly awarded amount for spreading of gravel by the contractor. In fact this claim of the contractor was baseless. It is also submitted that the prevailing schedule of rates of 1977 of P.W.D. Circle-II, Udaipur had no such item covered under the agreement and this item was not covered under B&R. The appellant also

submitted that the quantity of earth brought by the contractor was not stocked as per rules and the procedure, as such the claim of the contractor is bogus. It is submitted that earth was directly dumped by mechanical means without stacking and as such deduction made was correct and as per rules. But contrary to this, award has been issued by the learned Arbitrator and same has been made rule of the court by the court below. It is also submitted that contractor has claimed for 167% for cutting material, for which there is no justification but still the learned Arbitrator has allowed the claim of the contractor. No other ground has been raised by the appellant-State in the appeals.

It appears from the objection petition filed by the appellant before the court below that the appellant has raised several issues but they all are on merits and demerits of the claim. In appeals before this Court, in fact the appellant-State prayed for re-appreciation of the evidence which was before the learned Arbitrator for deciding the question of fact about the work done by the contractor. The learned Arbitrator in his award clearly mentioned that he examined and considered the claims, pleadings of the parties oral and documentary evidence and also written as well as oral arguments of the parties and after considering the entire record, he has decided to allow the claim of the contractor to the extent as mentioned in the award.

It will be worthwhile to mention here that the claimant claimed

Rs.64399.50 for wrongful deduction made by the State against cutting in earth-work etc. For this, the learned Arbitrator awarded amount of Rs.18,519.27. The claimant claimed for the payment for the item of spreading of gravel to proper camber in layers not exceeding 15 cms. in thickness as per specification including dressing, Rs.201354.38. This claim has been allowed by the learned Arbitrator in total. The third claim for wrongful deduction made on a quantity of 27130.63 cum of "Add extra for 1 km. Lead with all leads" was for Rs.30264.91. That too was allowed by the learned Arbitrator but against the claim of Rs.100186.04 for difference in cost of earthwork in cutting transported to a lead of 1 km., the learned Arbitrator awarded amount of Rs.42,633.84. The note-sheet in the file proceeding of the learned Arbitrator dated 2.5.1991 clearly reveal that the learned Arbitrator gave full opportunity of hearing to both the parties and both the parties argued the matter at length. They also submitted their written arguments and, thereafter, the award was passed.

In view of the facts mentioned above, the appellant-State failed to make out any ground as enumerated under Section 30 of the Arbitration Act, 1940. The learned court below before deciding the objection raised by the appellant-State, carefully considered the law laid down by the Hon'ble Supreme Court in various decisions and, thereafter reached to the conclusion that the appellant-State failed to

make out any case. It will be worthwhile to mention here that there is no allegation of malafide or the award having been passed beyond the jurisdiction. There is no allegation of misconduct or that the award has been improperly procured or otherwise invalid. Not only the grounds as given in Section 30 of the Arbitration Act, 1940 were not before the court below nor they have been raised in appeal.

In view of the above, both the appeals preferred by the appellant-State against the rejection of their objections and making the award rule of the court, are devoid of any force. Hence both the appeals are hereby dismissed.

(**PRAKASH TATIA),J.**

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